



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

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Doug Benevento, Regional Administrator
US EPA, Region 8
Mail Code 8RA
1595 Wynkoop Street
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Dear Regional Administrator Benevento:

Thank you for your call last week regarding South Dakota's NPDES pretreatment program. I believe we are the only delegated pretreatment program in Region 8. We do not dispute that the federal pretreatment regulations require sampling compliance inspections be conducted at every Significant Industrial User every year, but this requirement is not productive, beneficial, or necessary. In the spirit of cooperative federalism, the department recommends Region 8 either use administrative discretion in its oversight of South Dakota's NPDES pretreatment program or promote with EPA Headquarters a simple revision to the rules to accommodate our delegated program.

First, we will provide some background. The South Dakota Department of Environment and Natural Resources (DENR) is the control authority for 34 Significant Industrial Users across the state. However, only 9 of these industries pose a significant risk of pass through or interference at the publicly-owned treatment works. Based on the risk, DENR conducts on-site compliance inspections of these 9 industries every other year.

The other 25 industries consist of 23 metal finishers, 1 aluminum-forming facility, and the Sanford Underground Laboratory. Ten of these are in small communities of less than 2,000 people; four are in communities of less than 1,000 people. Consequently, local resources are very limited. More significantly, these Categorical Industrial Users do NOT pose a significant risk to the publicly-owned treatment works. Based on this low risk, DENR inspects these industries every third year with samples taken if possible.

To meet the intent of the annual inspection requirement, DENR conducts an intensive off-site desk audit of all 34 Significant Industrial Users EVERY YEAR that they do not get an on-site inspection.

So a fair question is, what have been the results of this inspection schedule? DENR is proud to report that NO permitted Significant Industrial User has caused pass through or interference at a publicly-owned treatment works in more than ten years. Most of the Categorical Industrial Users are metal finishers, and if they are properly designed and operated and maintain an effective toxic organics management plan, there simply are

no violations. We did have one unpermitted industry discharge high suspended solids that caused pass through problems, but we followed that incident up with an enforcement action that included a schedule for compliance and required them to obtain a pretreatment permit. Since then, there have been no problems.

With this excellent compliance history, DENR does not schedule annual sampling inspections because it would be a logistical nightmare, a waste of resources, and would produce no environmental benefits. Most of the metal finishers do not discharge continually, but have only periodic batch discharge. Nine of those discharge less than 1,000 gallons in a batch. As you can guess, batch discharge frequencies vary widely and can be from multiple discharge points, with many of those unable to discharge from all points at the same time. To give you an idea of how small and infrequent these discharges are, we have enclosed a few pictures of some of our Categorical Industrial Users. We have also enclosed a map showing the wide-spread locations of both the Significant and Categorical Industrial Users across the state.

We try to maximize use of our limited resources by scheduling inspection trips to stop at several different industrial users in the same geographic area over a period of two or three days. But to catch batch discharges, DENR would have to make a separate trip to each one; even more trips if there are multiple discharge points. Conducting separate trips will easily burn up more than 500 staff hours which is 3 months and cost us more than \$46,000. Restricting staff time to just these inspections does not get any other work done that is needed to implement the pretreatment program, such as pretreatment audits, pretreatment compliance inspections, or inspections of unpermitted facilities, let alone any other work related to administering the NPDES program.

Bottom line - DENR believes our existing inspection schedule maximizes our resources while still providing adequate oversight of all permitted industrial users. DENR's approach is supported by the excellent compliance record at these facilities.

We give EPA credit for trying to address this situation by introducing the Non-Significant Categorical Industrial User in the pretreatment streamlining rules. Oversight requirements were substantially reduced for Non-Significant Industrial Users. However, EPA set the threshold too narrow as this category applies only to facilities that discharge less than 100 gallons per day. It does not apply to industries that batch discharge infrequently. We believe a win-win solution to this dilemma is for EPA to modify the definition of the Non-Significant Categorical Industrial User to include small batch dischargers that do not pose a risk to the publicly-owned treatment works. We have provided a suggested addition to 40 CFR 403.3(v)(2) which is highlighted below:

- (2) The Control Authority may determine that an Industrial User subject to categorical Pretreatment Standards under § 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater or discharges more than 1% of the total POTW's average daily flow (excluding sanitary, non-contact cooling and boiler blowdown

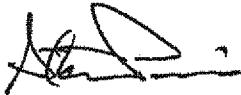
wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

- (i) The Industrial User, prior to the Control Authority's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- (ii) The Industrial User annually submits the certification statement required in § 403.12(q) together with any additional information necessary to support the certification statement;
- (iii) The Industrial User never discharges any untreated concentrated wastewater.

This change would allow DENR to classify many of our 25 Categorical Industrial Users as Non-Significant Categorical Industrial Users and continue our successful inspection schedule. This will not only extend DENR's limited resources to continue doing work that matters, but will free up resources for these small industries that are *"Making America Great Again"* by providing manufacturing jobs in rural America. In return for Region 8's help, DENR will agree to conduct annual on-site inspections of our 9 Significant Industrial Users, even though we do not agree this increase is necessary.

In conclusion, DENR pursued delegation of the pretreatment program because we believed the state was in the best position to regulate our industries fairly and protect our publicly-owned treatment works. We still do, but the requirement to inspect and sample these industries annually will take away from other important NPDES work and produce no environmental benefits. You told me that as Regional Administrator, you wanted to do things that matter in the name of cooperative federalism. DENR would submit this as one of those things. Thank you for your consideration.

Sincerely,



Steven M. Pirner, PE
Secretary

Enclosures:

- 1. Pictures of small batch discharge units from Categorical Industrial Users
- 2. Map showing locations of Significant and Categorical Industrial Users

cc: Marty Jackley, Attorney General
Matt Konenkamp, Senior Policy Advisor, Governor's Office